

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,
ex rel. [UNDER SEAL],

Plaintiffs,

v.

[UNDER SEAL],

Defendants.

Civil Action No. 1:23-CV-1

FILED UNDER SEAL

THE UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,
ex rel. JOSEPH SEIKEL and TERENCE
SEIKEL,

Plaintiffs-Relators,

v.

DAVID B. ALVAREZ, APPLIED
CONSTRUCTION SOLUTIONS, INC.,
ENERGY TRANSPORTATION LLC,
ENERGY RESOURCE GROUP, LLC,
ET360, LLC, BEAR CONTRACTING,
LLC, BEAR UTILITIES, LLC, JASON P.
HENDERSON, and JOHN DOES Nos. 1-50,
FICTIONAL NAMES,

Defendants.

Civil Action No. 1:23-CV-1
(KLEEH)

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THE UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of the decision of the United States not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b), which allows the relators to maintain the action in the name of the United States¹; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States requests that, should either the relators or the defendants propose that this action be

¹ This representation presumes that the relators will be represented by competent counsel. *See Gunn v. Credit Suisse Group AG*, No. 13-4738, 610 F. App’x 155, 157 (3d Cir. 2015) (holding that a *pro se* relator cannot pursue claims on behalf of the United States).

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dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to undersigned counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action for good cause at a later date, and to seek the dismissal of the relators' action or claim. The United States also requests that it be served with all notices of appeal.

Finally, the United States requests that the relators' Amended Complaint, this Notice, and the attached proposed Order be unsealed. The United States requests that all papers filed in this action before August 24, 2022, except the relators' original complaint, remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed Order accompanies this notice.

Dated: April 7, 2023

Respectfully submitted,

WILLIAM IHLENFELD
United States Attorney

/s/ Christopher J. Prezioso
CHRISTOPHER J. PREZIOSO
Assistant United States Attorney
Chief, Civil Division

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/s/ Maximillian F. Nogay

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